Exhibit B

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UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

ABBOTT GMBH & CO., KG, AND

ABBOTT BIORESEARCH CENTER, INC.

and ABBOTT BIOTECHNOLOGY LTD.,

Plaintiffs,

v.

No. 09-11340-FDS

Pages 8-1 - 8-180

CENTOCOR ORTHO BIOTECH, INC.

and CENTOCOR BIOLOGICS, LLC,

Defendant.

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 8

September 20, 2012 8:30 a.m.

United States District Court
Courtroom No. 2
One Courthouse Way
Boston, Massachusetts 02210

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     patent -- " Well, that's just his independent analysis.
     don't know how that gets wrapped into what the Board did
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     anyway. So I assume that Mr. Lee is going to have him talk
     about that stuff anyway, but in terms of --
              THE COURT: In other words, he can say, without saying
     who he agrees with, he can just say "a major difference between
     the prior art, " et cetera, without stating whether he agrees
     with what the Patent Board said or not.
              MS. MULLIN: I would expect that he'll be doing that.
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              THE COURT: Yes.
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              MS. MULLIN: But the sum total of the rest of the
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     analysis of what the Board did, or, frankly, what issues were
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     in front of the Board other than saying, "Well, this is what
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     the Board said and I agree with them --"
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              MR. LEE: Your Honor, I wasn't even going that far.
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     am trying to lay the record that I think I need to for purposes
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     of the burden of proof under i4i. My question was going to be,
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     "Did the Board consider the issue of obviousness in phage
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     display?" His answer would have been "Yes," and the answer
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     would have been, did the patent issue?
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              THE COURT: I don't see how that's required by i4i.
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     mean, in fact, I'm not sure that anything is required other
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     than the patent was issued.
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                        I actually think, your Honor, i4i
              MR. LEE:
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     distinguishes. It says the burden is more easily carried --
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- 1 it's two things.
- THE COURT: The burden is more easily carried if
- 3 certain types of evidence is --
- MR. LEE: If it was considered by the Patent Office.
- 5 THE COURT: Right.
- MR. LEE: And it may be more easily carried if there
- is evidence not before the Patent Office that is more material
- 8 than what was before the Patent Office.
- 9 THE COURT: Right. But that's the prior art. In
- other words, so the jury is entitled to be told what prior art
- is before the Patent Office and what not.
- MR. LEE: Actually, your Honor, that's -- and I
- haven't been clear getting it through -- i4i phrased it in
- terms of prior art because that's the only issue that was
- before the Supreme Court. It was a prior art issue. The
- reasoning applies to both the issues considered by the Patent
- Office and prior art because, your Honor, written description/
- enablement are not prior art issues.
- THE COURT: All right, I let you ask those questions,
- the three sets of questions here. I think he, right, he
- 21 addressed written description, enablement, and obviousness. I
- let you ask those questions, what the Patent Board did, but now
- you want to get into the reasoning of the Patent Board.
- MR. LEE: No, no. For written description and
- enablement, it's going to be what the Patent Office did during

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- the prosecution. That was my second question. Am I not
- allowed to get into that either?
- THE COURT: If the only case you have saying that you
- 4 can get into it is i4i, I don't think it requires that, and I
- 5 have real concerns about it. Again, the whole proceeding is a
- 6 waste of time if we're just going to go through all the Patent
- Board's reasoning, you know, everything they considered, and
- 8 all the jury is supposed to do is rubber-stamp that. I mean,
- 9 it has to be an independent inquiry, again, with a very heavy
- burden of proof on the part of Centocor.
- MR. LEE: This is helpful, your Honor. Let me just
- say this, because I've tried and haven't convinced your Honor.
- Our proffer would be that we would take Dr. Marks through the
- file history, not including the interference, to show what the
- Patent Office did on the issues of written description,
- enablement, and obviousness, so that the record would be clear
- that some of the very same arguments that are being made now
- were made before. And as to the interference, I would go the
- one question further for the reasons we discussed at the
- sidebar. But I understand your Honor's ruling. I make the
- 21 proffer, and then that saves us the time of asking the
- questions.
- THE COURT: All right, I will exclude it unless,
- again, someone shows me a case other than i4i that convinces
- me that that's what I need to do.

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              MS. MULLIN: Your Honor, just to complete the record,
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     though, I would also point out that I don't think that's
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     disclosed in Dr. Marks's expert report in any event.
               THE COURT: All right. Okay, I will, unless there's
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     anything else, I will see you at 8:15 tomorrow.
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               (Adjourned, 1:15 p.m.)
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